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May 3, 2004

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S W
Room TW-A235
Washington, D. C. 20554

RE: TRS Fund Administration
CC Docket No. 98-67

Dear Ms. Dortch:

In accordance with 47 C.F.R. § 64.604 (c)(5)(iii)(H), enclosed are the original and four (4) copies of the National Exchange Carrier Association, Inc.'s Annual Submission of TRS Payment and Revenue Requirements, for July 2004 – June 2005.

Acknowledgment and date of receipt of this letter is requested. A duplicate copy has been provided for that purpose

Sincerely,

John A Ricker

Enclosures

cc: Thomas Chandler, Consumer and Governmental Affairs Bureau
William Hill, Wireline Competition Bureau
Cheryl King, Consumer and Governmental Affairs Bureau
James Lande, Wireline Competition Bureau
Warren O'Hearn, Consumer and Governmental Affairs Bureau
Tim Peterson, Office of the Managing Director
Qualex International

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing filing was served this 3rd day of May, 2004, by mailing copies thereof by United States Mail, first class postage paid, by express mail, or by hand delivery, to the persons listed below.

Maripat Brennan

The following parties were served
Marlene H Dortsch*
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Washington, DC 20554
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:	)	
	)	
Telecommunications Services for	)	
Individuals with Hearing and	)	CC Docket 98-67
Speech Disabilities, and the	)	
Americans with Disabilities Act	)	
of 1990	)	

Interstate Telecommunications Relay Services Fund

Payment Formula and Fund Size Estimate

National Exchange
Carrier Association, Inc.
80 South Jefferson Road
Whippany, NJ 07981
May 3, 2004

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FEDERAL COMMUNICATIONS COMMISSION
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Payment Formula and Fund Size Estimate
Interstate Telecommunications Relay Services (TRS) Fund
For July 2004 through June 2005

1. Introduction

The National Exchange Carrier Association, Inc. (NECA) herein submits the Telecommunications Relay Services (TRS) provider payment formulas, fund size estimate and carrier contribution factor for the period July 2004 through June 2005, in accordance with Section 64.604 of the Federal Communications Commission's (FCC or Commission) rules.[1] NECA is a not-for-profit corporation responsible under Subpart G of the Commission's Part 69 rules for administering interstate access charge pools for participating local exchange carriers (LECs) and the TRS Fund. [2]

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[1] 47 C F R §64 604 (c)(5)(iii)(H).

[2] *See* Telecommunications Relay Services, and the Americans with Disabilities Act of 1990, CC Docket No. 90-571, *Third Report and Order*, 8 FCC Rcd 5300 (1993) (*TRS III*) *TRS III* modified and adopted certain rules regarding TRS interstate shared funding that were proposed in an earlier Commission *Order on Reconsideration, Second Report and Order, and Further Notice of Proposed Rulemaking*, 8 FCC Rcd 1802 (1993) (*TRS II*). *See* Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, CC Docket No. 90-571, *Order on Reconsideration, Second Report and Order, and Further Notice of Proposed Rulemaking*, 8 FCC Rcd 1802 (1993) (*TRS II*).

Based on cost and demand projections received from the providers of relay services, NECA is proposing reimbursement rates for traditional TRS, Speech to Speech (STS) service, Internet Protocol relay service (IP), and Video Relay Service (VRS) that are lower than the current period. However, because of projected increases in demand for IP and VRS, the funding requirement is significantly higher.[3]

To fund the program, NECA is proposing a contribution factor of 0.00356, an increase from 0.00220 for 2003 - 2004. When applied to carrier's 2003 end-user interstate and international revenues of $81 2 billion, the 0.00356 factor will produce the required fund size of $ 289 4 million.

Upon approval by the Commission of the proposed contribution factor, fund size requirement, and reimbursement rates, NECA will begin billing carriers and distributing funds to relay service providers in July 2004.[4]

2. Interstate TRS Fund

The TRS Fund is designed to compensate eligible relay service providers for the costs of furnishing interstate traditional TRS and STS, and both intrastate and interstate VRS and IP [5] Fund distributions to providers are made on the basis of payment formulas initially

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[3] The proposed rates were reviewed with the Interstate TRS Fund Advisory Council; their position on the proposed rates may be found in Section 10 A, infra.

[4] The Commission adopted shared funding as the method for interstate cost recovery in *TRS II*, proposing at that time that NECA be named administrator of the interstate TRS Fund. *See TRS II* at ¶¶ 2 and 27 *TRS III* designated NECA as administrator for a two-year period See *TRS III* at ¶ 7. In its 1995 fund administrator order, the Commission extended NECA's term as administrator for four additional years until July 23, 1999 *See* Appointment of the Telecommunications Relay Services (TRS) Fund Administrator and Composition of the TRS Advisory Committee, CC Docket No. 90-571, *Memorandum Opinion and Order,* 10 FCC Rcd 7223 (1995). In 1999, the Commission again extended NECA's term as administrator until July 25, 2003. *See* Appointment of the Telecommunications Relay Services (TRS) Fund Administrator and Composition of the TRS Advisory Committee, CC Docket No. 90-571, *Memorandum Opinion and Order,* 14 FCC Rcd 10553 (1999)

[5] Eligible providers are defined as (1) TRS facilities operated under contract with and/or by certified state TRS programs pursuant to section 64 605, or (2) TRS facilities owned by or operated under contract with a common

computed by NECA in accordance with Commission rules and then approved or modified by the Commission.

The Commission's shared funding mechanism for the TRS Fund ensures that the costs of meeting relay service obligations are borne equitably. The fund requires contributions from all interstate telecommunications common carriers, based on each carrier's percentage of end user interstate services.[6]

The TRS funding period commences July 1 and ends June 30. NECA will use the carriers' 2003 interstate and international end user revenues reported on the FCC Form 499-A on April 1, 2004, and provided to NECA by USAC, the Revenue Data Collection Agent, as the basis for calculating carriers' contributions. Carriers' 2003 revenues are $81.2 billion, $3.7 billion more than reported for 2002. Annual contributions are due July 26th. Carriers whose contributions are $1,200 or more may pay in twelve equal monthly installments, due on the 26th of each month.

Historically, providers have been paid in the second month after the month in which the minutes are handled. Beginning with the 2004 - 2005 funding period, NECA will modify the provider reimbursement calendar, shortening the interval between providers' submission of minutes, and their payment. With the new schedule, providers will be paid at the end of

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carrier providing interstate services pursuant to section 64.604, or (3) interstate common carriers offering TRS pursuant to section 64 604. *See* 47 C F R. § 64 604 (c)(5)(iii)(F).

[6] In its streamlined contributor reporting requirements order, the Commission adopted rules requiring every carrier providing interstate telecommunications services to contribute to the TRS Fund on the basis of its relative share of interstate end user revenues *See* 1998 Biennial Regulatory Review – Streamlined Contributor Reporting Requirements Associated with Administration of Telecommunications Relay Services, North American Numbering Plan, Local Number Portability, and Universal Service Support Mechanisms, CC Docket No. 98-171, *Report and Order*, 14 FCC Rcd 16602 (1999). These contributions are made by carriers offering interstate services including, but not limited to, cellular telephone and paging, mobile radio; operator services; personal communications service (PCS); access (including subscriber line charges); alternative access and special access, packet-switched; WATS; 800; 900; message telephone service; private line; telex; telegraph; video, satellite; intraLATA; international and resale services. *See* 47 C.F R. § 64 604 (c)(5)(iii)(A).

the month following the month when the minutes were handled.[7] For example, currently, providers' traffic handled in May would be reported in June and compensated by the fund in July. Under the revised schedule, May traffic will now be compensated by the fund in June.

3. Data Collection and Analysis

Relay providers continue to be a diverse group. Services are offered by large interstate interexchange carriers, large and small local exchange carriers, non-telecommunications for-profit companies, and not-for-profit organizations. Some providers offer all four services while others only provide one or two. Several providers have been reimbursed for traditional TRS since the inception of the fund in 1993 while new VRS-only providers started receiving reimbursement in 2003. Regardless of the type of company providing the service, its experience in providing relay, or the type of relay service it provides, NECA applies consistent requirements when collecting data and levels of scrutiny when analyzing the data submitted.

NECA distributed the annual center data request to relay providers via email on September 30, 2003.[8] In light of the direction provided in the June 30, 2003 TRS funding order,[9] NECA required providers to submit detailed explanations of their expenses in the categories of salaries and benefits, engineering, other corporate overheads, depreciation, taxes, profit margin, outreach and advertising. Providers were directed to submit data

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[7] *See* Exhibit 5 Reporting and Disbursement Schedule

[8] In *TRS III* the Commission directed the administrator to "fashion a form . consistent with Parts 32 and 36 procedures to meet the needs of TRS providers who would otherwise not be subject to Part 32 . . .." (*TRS III* at ¶¶ 13-14, and 30). NECA's September data request (as shown in Appendix A) supplied thorough instructions, including detailed descriptions of accounts that closely track Part 32 definitions.

[9] Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CC Docket No 98-67, *Order*, 18 FCC Rcd 12823 (2003) *(June 30th Order)*.

separately for TRS, STS, IP and VRS by January 5, 2004. Cost and demand data reported by relay providers consisted of actual amounts for 2002, annualized actual amounts for 2003, and projections for 2004 and 2005. The 2002 and 2003 data were used for trending purposes and will be used for the review of certain providers as part of the fund administrator's audit process. The 2004 and 2005 projections are used for rate development for the next funding period.

In its analysis of the provider data and the development of the 2004 – 2005 reimbursement rates, absent a final FCC Order for the 2003 – 2004 period, NECA followed the direction the FCC set in its June 30th interim funding order. In the *June 30th Order*, the FCC stated that reimbursement rates are intended to compensate providers for the reasonable and fair costs of providing eligible TRS.[10] The FCC determined that the profit margin included in the providers' 2003 – 2004 projections was inconsistent with Commission directives. The Commission found, in their analysis of VRS provider data, that the profits and tax allowances equaled a markup of 27.2% of the total underlying VRS expenses. "The basis for these profit claims . . . a percentage of total estimated VRS costs . . . is neither described nor authorized under our rules."[11] The FCC further noted that a rate of return of 11.25% has been established for rate of return carriers' on investment only.[12] The Commission adjusted the filings to allow an 11.25% rate of return on investment, plus applicable tax allowances, as the relevant benchmark in analyzing and adjusting the providers' profit data.[13]

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[10] *June 30th Order* at ¶24.

[11] *Id* at ¶35

[12] *Id.*

[13] *Id*

In the *June 30th Order*, the Commission also indicated its intention to examine traditional TRS, STS and IP rate development to ensure that all relay services are provided to the public in an efficient fashion and that those costs were also fair and reasonable as required by FCC rules.[14] Consistent with the criteria established in the *June 30th Order*, NECA performed a detailed examination of the data for all four relay services in developing the proposed compensation levels for the 2004 – 2005 funding period.

NECA's analysis uncovered anomalies in the 2004 – 2005 data reported by most providers. These included, in come cases: inconsistencies in the relationship between projected salaries and demand; the calculation of occupancy and utilization percentages for Communications Assistants (CA) and interpreters; the amount of research and development included in engineering expenses; the costs included in corporate overheads; disparities between comparable expenses for traditional TRS and IP; the type of taxes claimed or paid; the calculation of profit margin; etc. In each case, NECA contacted the providers concerned and obtained corrections or clarifications before using the data in its calculation. In some cases, after repeated requests for explanations did not achieve a satisfactory result, or a provider's average cost per minute fell far out of the range of all other providers, NECA excluded that provider's data from the rate development calculations.[15]

In its in-depth analysis of the data for all four services, NECA employed measures similar to the FCC's review of VRS in the *June 30th Order*. NECA did not include providers' income taxes or profit margins in its rate development. Except for those providers whose data was totally excluded from the rate development, NECA did not reduce salaries

[14] *Id* at ¶26

and benefits associated with Communications Assistants (CA) or interpreters. Unjustifiable indirect or allocated costs that were out of the range of most providers, primarily in the area of compensation, were adjusted.

Because NECA does not collect data on investment, it was necessary to develop a surrogate for working capital in order to establish an equitable rate of return. Because out of pocket expenses are based on minutes, NECA used the projected average cost per minute as the surrogate. NECA applied a monthly factor of 1.4%, incorporating an annual 11.25% rate of return on investment and a 40% income tax allowance (i.e., gross up for income taxes on the return component), to the average cost per minute of each service to calculate the proposed per minute reimbursement rates.

NECA believes that the measures it used reflect the *June 30th Order*, bring consistency to the analytical process, and result in payment formulas that are reasonably accurate reflections of the average costs to provide interstate TRS and STS, and intrastate and interstate IP and VRS.

4. **TRS Rate Development and Fund Requirement**

Providers of traditional TRS have been reimbursed for interstate minutes from the TRS Fund since its beginning on July 26, 1993. Over the years, the number of traditional TRS providers has dwindled from a high of twelve to the six providers that are currently receiving reimbursement from the interstate fund.

In *TRS III*, the Commission observed that its Part 36 separations' rules prescribe "minutes of use" as the allocator for operator services, the telecommunications function that

[15] NECA excluded all of the data of three single-center providers. a new provider who could not substantiate its projections, a provider who was exiting the business, and a third provider, of TRS only, whose occupancy and utilization was unreasonably low and whose average total costs were out of the range of most providers.

most closely approximates the principle function of TRS.[16] NECA believes that minutes of use continue to be a practical and logical cost allocator for determining interstate TRS costs.

For interstate TRS, once the relationship of a center's interstate, international and an allocation of its toll-free and 900 service minutes is known, a usage based factor may be applied to total center costs to determine the interstate portion of the costs. This provides a reasonable and practical simulation of Part 36 separations procedures.[17]

Providers are generally unable to identify the jurisdiction of toll free calls.[18] Based on guidance from the Interstate TRS Fund Advisory Council, NECA has, since 1996, developed a factor for TRS centers based on the relationship of traditional TRS interstate and international billed minutes to TRS intrastate toll, interstate and international minutes.

NECA used this methodology through the 2002 – 2003 funding period. The allocation factor developed for that period was 51 percent interstate. When NECA attempted to use the same methodology to develop the factor for the 2003 – 2004 funding period, a significant shift in projected minutes from traditional TRS to IP relay was noted. It did not seem likely that the jurisdiction of the calls had changed. Rather, it appeared more likely that the factor was distorted by text telephone users migrating to the use of computers and the Internet to access relay service.

Calls placed using Internet Protocol exhibit many of the same characteristics as calls placed to toll-free numbers – the provider is unable to identify the jurisdiction of the call and

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[16] *TRS III* at ¶ 13

[17] The costs of providing interstate TRS do not vary significantly from the costs of providing intrastate TRS. The service provided (*i e*, transliteration of TTY text to speech and *vice versa*) is essentially the same, regardless of whether a call is made across the street or across the nation.

[18] For most TRS providers, the data submitted in the 1996 TRS center data request represented their initial reporting of toll free minutes.

its associated minutes. Because it is not yet possible to identify the origin of IP calls, it is not possible to develop a factor using IP demand data either. NECA's recommendation to freeze the toll-free allocation factor at 51% for the 2003 – 2004 period was accepted by the Commission in 2003. Since providers have the same problem of being unable to identify the jurisdiction of calls placed to 900 numbers, NECA used the same methodology to estimate interstate usage associated with these messages. NECA again recommends using the factor of 51% for the 2004 – 2005 period for both toll-free and 900 number minutes. The interstate minutes of use used to calculate the traditional TRS reimbursement rate reflect this methodology.

Once the data analysis was completed, incorporating the measures noted in Section 3 above, the traditional TRS cost per minute of use for each center was calculated as follows: projected total 2004 TRS costs were divided by projected total 2004 TRS minutes, and projected total 2005 TRS costs were divided by projected total 2005 TRS minutes. The resulting individual center cost per minute for 2004 and 2005 was multiplied by that center's estimated 2004 and 2005 interstate minutes (including international minutes and the interstate allocation of toll free and 900 number minutes), to produce interstate costs by TRS center for each year. Individual center interstate costs were summed, as were individual demand projections.[19]

Because the reimbursement rate for traditional TRS and IP relay is an average of the costs of both services, the IP cost per minute had to be developed before the reimbursement rate could be calculated. (See Section 5 for IP rate development and Section 6 for TRS and IP average rate development.)

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[19] See Exhibit 1A for TRS rate development.

NECA utilizes individual TRS providers' minute forecasts for the next two years for use in calculating the reimbursement rate; however, NECA uses actual growth data to estimate the size of the interstate TRS Fund for traditional TRS. With ten years of history available on traditional TRS, NECA believes that using the historical growth rate provides a more accurate forecast and has used –0 007 percent decline per month to arrive at the traditional TRS forecast for 2004 – 2005 of 22.2 million minutes.[20]

5. IP Relay Rate Development and Fund Requirement

In an April 2002 Order, the FCC authorized reimbursement of all IP relay minutes from the interstate TRS fund on an interim basis because, at the time, there was no automatic means to determine whether an IP relay minute is intrastate or interstate.[21] IP relay minutes were to be reimbursed at the same rate as traditional TRS minutes because it appeared that there was little difference in the costs of providing these services.[22]

After completing the analysis of IP relay data employing the measures noted in Section 3, NECA calculated the cost of IP relay per minute for each center as follows: projected total 2004 IP relay costs were divided by projected total 2004 IP relay minutes excluding general assistance, and projected total 2005 IP relay costs were divided by projected total 2005 IP relay minutes excluding general assistance. The resulting individual

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[20] See Exhibit 2, page 2A of 4, for development of the traditional TRS forecast.

[21] In April 2002, the Commission clarified that IP Relay falls within the statutory definition of TRS, and therefore, such services are eligible to recover their costs from the interstate TRS fund. On an interim basis, the Commission allowed recovery of all costs of provided IP Relay from the interstate fund because, at this time, there is no automatic means to determine whether an IP Relay minute is intrastate or interstate. In its *Second Further Notice of Proposed Rulemaking*, the Commission requested comments on whether this interim measure should be permanent *See* Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Petition for Clarification of WorldCom, Inc., CC Docket No 98-67, *Declaratory Ruling and Second Further Notice of Proposed Rulemaking*, 17 FCC Rcd 7779 (2002) (*IP Declaratory Ruling & Second FNPRM*).

[22] *See IP Relay Declaratory Ruling & Second FNPRM* at ¶22

center cost per minute for 2004 and 2005 was multiplied by that center's total IP relay minutes excluding international to produce total costs per center for each year. Individual center costs were summed, as were individual center demand projections.[23]

Traditional TRS and IP relay totals were then combined to determine the reimbursement rate for traditional TRS interstate and international minutes and all IP relay minutes, except international. See Section 6 for TRS and IP relay average rate development.

While traditional TRS is a mature service that has many years of growth data to use in forecasting, IP relay had minimal historical data on which to base growth projections when the 2003 – 2004 forecast was developed in April 2003. The four providers who currently offer IP relay began offering it at different times in 2002 and 2003. Also, unlike the forecast for traditional TRS minutes, for which the interstate fund compensates for only interstate calls and is linked to providers' state contracts, IP relay growth is projected on a national basis. Accurate forecasting is inherently more difficult because providers' projections may overlap. NECA used a combination of the providers' forecasts and the limited available historical data to develop the 2003 – 2004 IP relay growth projections. During the funding year, IP relay minutes grew substantially over the annual projection of 28% that NECA submitted in its May 2003 filing. NECA revised the IP relay forecast to an annual growth rate of 79% in a January 16, 2004 letter to the FCC.

As discussed above, IP relay providers entered the marketplace at various points during the current funding year, making use of historical month-over-month usage growth somewhat limited in projecting future requirements. To develop the 2004 – 2005 forecast, NECA focused on the period beginning March 2003 when a third large provider entered the

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[23] *See* Exhibit 1B for IP rate development.

market and minutes increased by more than one million in a single month. For the period subsequent to March 2003 NECA calculated the monthly minute increases, including March 2004 minutes, and arrived at an average monthly minute growth of 209,497. NECA then grew IP relay minutes by that average monthly amount, from April 2004 through June 2005, to arrive at a total number of minutes for the July 2004 – June 2005 funding period of 86.7 million.[24]

In March 2004, NECA became aware of allegations of fraudulent use of IP relay. Because, by law, CAs may not make judgments concerning the validity of the call, providers have processed these calls as required and have been reimbursed for them. Because NECA was concerned about the potential impact on the 2004 – 2005 fund if this fraudulent use was not curtailed, NECA inquired as to the measures the IP relay providers were taking to control the situation. All providers responded that they have developed solutions to eliminate fraudulent use and are in the process of implementing them, thereby minimizing potential impacts on the fund.

6. TRS and IP Average Rate Development and Fund Requirement

Because the fund year consists of the last six months of one year and the first six months of the following year, a national average cost per minute of use covering this twelve-month period must be developed. Cost and demand totals for 2004 and 2005 for interstate traditional TRS and all IP, except international, were summed and then divided by two to obtain the average cost and demand for the two years. Next, the average costs, $98 million, were divided by the average minutes, 73.8 million, to determine the average cost per minute for July 2004 through June 2005. This produced an amount of $1.331 per minute of use.

[24] *See* Exhibit 2, page 2B of 4, for development of the IP forecast.

Finally, the 1.4% factor, explained in Section 3 above, was applied to the average cost per minute to determine the proposed reimbursement rate for traditional TRS and IP relay. NECA proposes a per minute reimbursement rate of $1.349 for the July 2004 – June 2005 funding period.[25] Applying the proposed rate to the TRS forecast of 22.2 million minutes and the IP relay forecast of 86.7 million minutes, produces a funding requirement for these services totaling $146.8 million.[26]

7. STS Rate Development and Fund Requirement

The reimbursement of interstate STS minutes, beginning in March 2001, was authorized by the FCC in its March 2000 TRS Order.[27] Because of the different characteristics of the service provided by the CA when handling a STS call, i.e., communication of a speech conversation versus communication of a text conversation, a separate reimbursement rate has been developed for STS since its inception. Data submitted by the providers for this filing shows that STS costs are extremely close to those associated with traditional TRS.

After analyzing the STS data using the methodology described in Section 3 above, NECA calculated the STS cost per minute of use for each center as follows: projected total 2004 STS costs were divided by projected total 2004 STS minutes, and projected total 2005 STS costs were divided by projected total 2005 STS minutes. The resulting individual center cost per minute for 2004 and 2005 was multiplied by that center's estimated 2004 and 2005

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[25] Exhibit 1C displays the formula, average cost per minute, and reimbursement rate for interstate traditional TRS and IP, using the aggregate data assembled by NECA.

[26] *See* Exhibit 4, TRS Fund Requirements.

[27] Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CC Docket No. 98-67, *Report and Order and Further Notice of Proposed Rulemaking*, 15 FCC Rcd 5140 (2000) (*March 2000 Order*).

interstate minutes (including international minutes and the interstate allocation of toll free and 900 number minutes), to produce interstate costs by STS center for each year. Individual center interstate costs were summed, as were individual demand projections.[28]

In developing the average cost per interstate STS minute, NECA found that most centers reflected an average cost per minute between $1.34 and $2.69 for 2004, and between $1.30 and $2.78 for 2005. However, three STS centers exhibited characteristics that were significantly out of the norm and NECA excluded them from the rate development. One of these centers had an average total cost in excess of $9 per minute; the other two projected very few STS minutes.[29]

To calculate the average STS cost for July 2004 – June 2005, cost and demand totals for 2004 and 2005 for interstate STS were summed and then divided by two to obtain the average cost and demand for the two years. Next, the average costs, $131 thousand, were divided by the average minutes, 92.6 thousand, producing an average cost per minute of $1.42. Finally, the 1.4% return factor, explained in Section 3 above, was applied to the average cost per minute to produce a proposed reimbursement rate for interstate STS of $1.44 per minute.

As described earlier, the STS cost data submitted this year more closely resembled traditional TRS costs than ever before. Consequently, NECA expects that, absent significant changes in cost characteristics, the 2004 – 2005 funding period be the final time that a separate interstate STS rate is calculated. Beginning with the 2005 – 2006 funding period, STS costs and demand will likely be included in the traditional TRS rate development and compensated at the same rate as traditional TRS.

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[28] Exhibit 1D for STS rate development.

[29] NECA informed the providers in question of its intent to exclude the data that had been submitted.

STS minutes have grown during the past three years but there is no clear growth rate discernible from the data. During 2003, STS use fluctuated from a low of 7.7 thousand minutes in June to a high of 16 thousand in December; February 2004 usage was 8.8 thousand minutes. For the 2004 – 2005 funding period, NECA is continuing to use the 0.0365 percent per month growth rate it has used since 2002, to arrive at a total of 155 thousand minutes.[30] At $1.44 per minute, the total fund requirement for STS is $223 thousand.[31]

8. VRS Rate Development and Fund Requirement

In the March 2000 Improved TRS Order, the Commission concluded that VRS was a form of TRS and permitted VRS to be compensated on an interim basis, using the same average per-minute methodology used for traditional TRS, so that providers could recover their reasonable costs related to providing VRS.[32] Although reimbursement for VRS was available beginning in October 2000, providers did not begin to offer VRS until the FCC authorized waivers of certain service requirements in December 2001.[33] Since that time, the number of VRS providers grew from two to seven, of which three provide VRS only.

In its development of the proposed VRS rate for the July 2004 – June 2005 funding year, NECA employed the same steps regarding profit margins and income taxes as it did in developing the rates for the other three services, as detailed in Section 3. In addition, NECA made adjustments to certain management salaries and benefits and marketing expenses that

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[30] See Exhibit 2, page 2C of 4, for the STS forecast.

[31] See Exhibit 4, TRS Fund Requirements.

[32] *March 2000 Order* at ¶34

[33] Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CC Docket No. 98-67, *Order*, 17 FCC Rcd 157 (2002).

appeared to be outside the norm and not directly attributable to the provision of VRS.[34] Research and development expenses, totaling less than $600 thousand for 2004 and 2005, were also removed.

NECA calculated the average per center cost per minute of use as follows: projected total 2004 VRS costs were divided by projected total 2004 VRS minutes excluding general assistance, and projected total 2005 VRS costs were divided by projected total 2005 VRS minutes excluding general assistance. Individual center costs were summed, as were individual center demand projections, to arrive at the total costs and minutes for the two years. The total was divided by two to obtain the average cost and demand for the two years. The average cost of $57 million produced by the above step was divided by average minutes, 7 98 million, producing an average cost per minute for July 2004 through June 2005 of $7.192. Application of the 1.4% factor to the average cost per VRS minute produces a proposed per-minute reimbursement rate for the funding period of $7.293.[35]

Like IP relay, VRS had limited historical data on which to base growth projections when the 2003 – 2004 forecast was developed in April 2003, and VRS growth is also projected on a national basis. NECA used a combination of providers' forecasts and the available historical data to develop 2003 – 2004 VRS growth projections. During the funding year, in spite of limitations placed on the per-minute cost recovery, VRS minutes grew substantially over the annual projection of 30% that NECA submitted in its May 2003

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[34] I think we need to provide a little more detail here regarding why we felt these were exorbitant.

[35] Given the concern over the current rate prescribed by the Commission,, NECA also calculated the average cost per minute assuming that all expenses had been allowed in order to compare it to the proposed VRS rate. With all expenses, including profit and taxes included, the average cost was $9.895.

filing. NECA submitted a revised VRS forecast with an annual growth rate of 196% in its January 16, 2004 letter to the FCC.

In developing the 2004 – 2005 VRS forecast, NECA focused on August 2003 through March 2004, a period of time when most of the seven providers were offering service. NECA calculated the monthly minute increase, including March 2004 minutes, and arrived at an average monthly minute growth of 57,726. NECA applied this average monthly growth in VRS minutes from April 2004 through June 2005 to arrive at a total number of minutes for the July 2004 – June 2005 funding period of 15.1 million. At $7.293 per minute, NECA projects a VRS funding requirement of $110.1 million.

9. Contribution Factor Calculation

In addition to the funding requirements for the four relay services, NECA's administrative expenses of approximately $600 thousand, including TRS Council meeting costs and the cost of an annual audit by an independent auditor, are included in the total fund requirement. All NECA expenses associated with TRS are accounted for on a "keep-cost" basis and charged only to the TRS Fund.[36] NECA's projection of interest on invested funds for the July 2004 – June 2005 period is $0.7 million.

As detailed in Exhibit 4, the TRS Fund size including traditional TRS, IP, STS and VRS, NECA administrative expenses, and an allowance for uncollectibles, is projected to be $283 million for the July 2004 – June 2005 funding period. Potential funding requirements of $6.5 million have been included to cover potential payment obligations associated with a

[36] National Exchange Carrier Association, Inc., Cost Accounting and Procedures Manual (Dec 30, 2003).

petition and a request for reimbursement pending with the Commission, making the total requirement $289.4 million.[37]

To calculate the proposed contribution factor for the TRS Fund, NECA used the carriers' 2003 end-user interstate and international revenues reported on the FCC Form 499A on April 1 and provided by USAC, the Revenue Data Collection Agent. Dividing the fund requirement of $289.4 million by the interstate and international end-user carrier revenues of $81.2 billion produces a factor of 0.00356.

NECA will continue to monitor the demand for the various relay services carefully, and keep the TRS Advisory Council and the Commission informed of actual reported demand levels as compared to forecasts.

10. Program Administration

A. Interstate TRS Fund Advisory Council Report

Pursuant to section 64.604 of the Commission's rules, the Interstate TRS Fund Advisory Council advises NECA on interstate TRS cost recovery matters.[38] The advisory council includes non-paid volunteers from the hearing and speech disability community, TRS users (voice and text telephone), state regulators and relay administrators, interstate service providers, and TRS providers. Appendix B, Exhibit 1 contains a listing of current Advisory Council members.[39]

In 2003, the Advisory Council held meetings in April and September. At the Council's April 22nd meeting in Washington, DC, NECA staff presented the proposed

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[37] *See* Sprint *Petition for Limited Reconsideration*, CC Docket No. 98-67 (Apr 24, 2003). *See also* AT&T *Comments* at 3-4, CC Docket No. 98-67, (May 22, 2003).

[38] 47 C F R. § 64 604(c)(5)(iii)(H)

[39] In a July 1999 Order, the FCC authorized the addition of a position in the hearing and speech disability community category for a representative from the speech disability community. *See* Appointment of the

provider reimbursement rates and the fund size requirement for TRS, IP, STS and VRS, and the carrier contribution factor to be filed on May 1, 2003 for the funding and reimbursement period of July 1, 2003 to June 30, 2004. The Council approved the filing with modifications to the VRS rate.

The Council's September meeting was held coincident with the National Association of State Relay Administration's (NASRA) annual meeting, in Albuquerque, NM, on September 4, 2003. NECA presented the fund status and changes to fund collection practices, and also reviewed changes to the annual center data request process.

On April 20, 2004, the Council met in Washington, DC, to review the proposed TRS, STS, IP and VRS reimbursement rates, fund size and carrier contribution factor for the July 2004 – June 2005 funding period prior to submission of the filing to the FCC on May 3, 2004. NECA staff presented the results of the annual TRS provider data collection and its proposed compensation rates for each service to the Council. The Council did not concur with the rates proposed for traditional TRS, IP, STS and VRS. The Council expressed their concern that the rate development, including the 11.25% rate of return and other mechanisms currently in place, did not properly reflect a reimbursement rate that takes into account the profit needs of the companies and the needs of the consumers. The Council urged the FCC to get further information to increase the rate of return or it's equivalent, to find out what the appropriate formula should be, and to increase the reimbursement rates accordingly for the 2004 – 2005 fund period. Members of the Council representing the user community expressed concern that a further reduction in the per-minute compensation for VRS will further degrade the availability and quality of the service. Members representing the

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Telecommunications Relay Services (TRS) Fund Administrator and Composition of the Interstate TRS Advisory Council, CC Docket No 90-571, *Memorandum Opinion and Order*, 14 FCC Rcd 10553 (1999).

provider community objected to the exclusion of profit and income tax from the calculation of the per-minute rates. The providers believe that limiting them to an 11.25% return on investment (a factor applicable to the regulated telephone industry) fails to recognize the characteristics of the labor-intensive service and limits their ability to attract investors.

NECA acknowledged these concerns but advised the Council that it planned to submit the proposed reimbursement rates for all four services as presented because it appears that the approach is consistent with Commission precedent set forth in the *June 30th Order.*

Appendix B, Exhibit 2 contains meeting minutes for the April and September 2003 Council meetings.

B. Audit Report

NECA has, to date, conducted 27 financial reviews of relay service providers. At least three reviews will be performed in 2004.

On December 1, 2003, NECA submitted copies of the financial statements of the TRS Fund for its tenth year of operation, together with reports from an independent certified accounting firm in accordance with sections 64.604(c)(5)(iii)(D) and (H) of the FCC's rules.[40] NECA expects that the audit of the 2003 – 2004 funding period will begin in August and the financial statements will be submitted to the Commission on December 1, 2004.

11. Exhibits

This section contains the exhibits referenced previously in this filing.

Exhibit:

1A Displays calculations of TRS cost per minute of use for each center and projected interstate TRS costs by center for 2004 and 2005 using the aggregate data assembled by NECA.

[40] 47 C.F.R. § 64.604(c)(5)(iii)(D) and (H).

1B Displays calculations of IP cost per minute of use for each center and projected IP costs by center for 2004 and 2005 using the aggregate data assembled by NECA.

1C Displays calculations of the payment formula and traditional TRS and IP national average rate, using the aggregate data assembled by NECA, for July 2004 through June 2005.

1D Displays calculations of Speech to Speech (STS) cost per minute of use for each center and projected interstate STS costs by center for 2004 and 2005, and calculations of the national interstate average rate for July 2004 through June 2005 using the aggregate data assembled by NECA.

1E Displays calculations of Video Relay Service (VRS) cost per minute of use for each center and projected VRS costs by center for 2004 and 2005, and calculations of the national average rate for July 2004 through June 2005 using the aggregate data assembled by NECA.

2 Displays actual Fund performance and projections for the funding period 1993 through June 2005. Each annual period for funding includes twelve monthly increments. In 2000, the period changed from April through the following March to July through the following June. Separate pages, 2A, 2B, 2C and 2D display TRS and IP, STS and VRS fund requirements respectively.

3 Displays month by month expenses incurred by NECA to administer the TRS Fund.

4 Displays total TRS and IP, STS and VRS funding requirements for the period July 2004 through June 2005 and the carrier contribution factor calculation.

5 Displays the providers' schedule for reporting interstate TRS, interstate STS and intrastate and interstate VRS and IP minutes of use to NECA, and the schedule for disbursing associated payments for July 2004 through June 2005.